

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 7, 2001 Session

**JOHN R. MALONEY, ET AL. v. MORRISTOWN CLINIC CORP., D/B/A
EAST TENNESSEE OB/GYN, P.C., ET AL.**

**Appeal from the Circuit Court for Hamblen County
No. 99CV068 Kindall T. Lawson, Judge**

FILED SEPTEMBER 19, 2001

No. E2000-02729-COA-R3-CV

This is a wrongful death action based upon alleged medical malpractice. The plaintiffs are the parents of Emily LeAnn Maloney, who died six days after her birth. The trial court dismissed¹ the plaintiffs' claims "for consortium and companionship damages" against the defendants – an obstetrician, his group, and a hospital – all of whom were involved in the birth and subsequent care of the plaintiffs' infant child. We reverse and remand for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Reversed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and D. MICHAEL SWINEY, J., joined.

David C. Lee and J.D. Lee, Knoxville, Tennessee, for the appellants, John R. Maloney and Cheryl C. Caruso, individually and as surviving parents of Emily LeAnn Maloney, deceased.

Edward G. White, II, and Amy V. Hollars, Knoxville, Tennessee, for the appellees, Morristown Clinic Corp., d/b/a East Tennessee OB/GYN, P.C., and William B. Harris, Jr., M.D.

C. J. Gideon, Jr., and Edward A. Hadley, Nashville, Tennessee, for the appellee, Hospital of Morristown, Inc., d/b/a Lakeway Regional Hospital.

OPINION

¹The order appealed from was entered as a final adjudication pursuant to the provisions of Tenn. R. Civ. P. 54.02. The trial court directed that "other aspects of the case should proceed without need for a stay." These "other aspects" pertain to such things as medical expenses, funeral expenses, and the mental and physical suffering of the plaintiffs' infant child.

On August 31, 2001, the Supreme Court released its opinion in the case of ***Hancock v. Chattanooga-Hamilton County Hospital Authority***, SC No. E1999-00169-SC-R11-CV, 2001 WL 997372 (Tenn., filed August 31, 2001). In ***Hancock***, the Supreme Court held that T.C.A. § 29-26-116 “allows recovery of filial consortium damages as a part of the pecuniary value of the decedent’s life.” 2001 WL 997372, at *3. In the instant case, the trial court dismissed the plaintiffs’ claims, which claims are predicated on the plaintiffs’ allegations that they “have permanently lost the companionship, affection, consortium and love of their daughter.” In so acting, the trial court resolved against the plaintiffs an issue – whether T.C.A. § 29-26-116 countenances a recovery of filial consortium damages – on which there was then no direct legal authority. The Supreme Court’s decision in ***Hancock*** has now addressed that issue by affirmatively recognizing such a claim. The plaintiffs in the instant case have stated a legally-cognizable claim for filial² consortium damages as a part of the pecuniary value of their infant daughter’s life.

The judgment of the trial court is reversed. Costs on appeal are taxed against the appellees. This case is remanded for further proceedings, pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE

²The word “filial” is defined as “[o]f, relating to, or befitting a son or daughter.” *Webster’s II New Riverside University Dictionary* 477 (1994).